

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2860 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MULLA IMRANBHAI ABDULHUSAIN

Versus

JENUDDIN VALIBHAI VALIKARIMWALA

Appearance:

MR MI MERCHANT for Petitioners

MR MH DAYAMAKUMAR for Respondent No. 1-absent.

NOTICE SERVED for Respondent Nos. 2 and 4.

MR GN SHAH for Respondent No. 5 -absent.

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE KUNDAN SINGH

Date of decision: 19/12/2000

ORAL JUDGEMENT

The petitioners have prayed for withdrawal of Regular Civil Suit no. 290 of 1983 from the Court of Civil Judge (J.D.) at Godhra for its disposal by this Court in exercise of the powers conferred by Article 228 of the Constitution of India on the ground that the case involves substantial questions of law as to the interpretation of the Constitution, the determination of which is necessary for the disposal of the case. In the alternative, it is prayed that the substantial questions of law involved in the case may be determined and the case be returned to the trial court for disposal in conformity with the judgment of this Court on such questions. The petitioners have also invoked the powers of the High Court under clause-13 of the Letters Patent and/or Section 24 of the Code of Civil Procedure, 1908 for the withdrawal of the suit and its disposal.

2. The petitioners are the members of the Dawoodi Bohra community and are defendant nos. 2 and 3 in the said suit. The respondent nos. 1 to 4 are also members of Dawoodi Bohra community, while the respondent no. 5 is "Aamil Sahib" of Godhra and the President of the Local Dawoodi Bohra Jamat at Godhra.

3. Copy of the plaint of Regular Civil Suit no.290 of 1983 which is placed on record shows that a declaration has been sought to the effect that collection and receipt of the religious and non-religious taxes mentioned in paras-3, 7 and 8 of the plaint by the defendants, that is, "Aamil Saheb" present respondent no.5 personally or through his servant and agents from Dawoodi Bohra community was contrary to the Muslim Law, unconstitutional, without right and arbitrary and that the defendant no.5 was not entitled to collect and/or received the said taxes or similar taxes. In para-3 of the plaint, it is stated that the defendant "Aamil Saheb" performs religious ceremonies and formalities on the occasions of births and deaths in the community and also delivers sermons and preaches to the congregations. Besides this, he recovers and receives from the people of the Dawoodi Bohra community, certain taxes which are described as religious and non-religious taxes. These are Zakatulmal, Khumus, Nazarul Maqam, Kafarat, Minnat Niyaz, Minnat Syedna Taher Saifuddin Saheb, Najwa Dais Zaman and Zakatul Fitar and Silatul Imam. According to the plaintiffs, the defendant had no legal right to recover or collect such taxes and as religious head, his duty was only to perform religious ceremonies and

formalities. In para-8 of the plaint, it is alleged that besides collecting and receiving Zakat etc., the defendant brings pressure on the people by adopting unconstitutional practices like social boycott and obstruction on the occasions of marriage and deaths and harasses people who do not pay or their families by social boycott. The case of the petitioners is that by the said suit which is filed under the guise of a representastive suit, the plaintiffs are seeking to take away the petitioners' fundamental rights and obstruct them and other Dawoodi Bohras of Godhra from practising their religion. In para-10 of the petition, it is contended that the questions that arise for consideration are whether the right to freely profess practise and propagate religion guaranteed under Article 25 of the Constitution includes the right to pay Zakat according to one's religious tenets and whether any other person has a right to such practice of religion and further whether Article 26 includes the right to have zakat applied or distributed in accordance with ones religious tenets. The petitioners have also posed a question whether and/or receipt and/or application of zakat is a purely religious matter under Article 25 and/or Article 26 of the Constitution of India and whether such payment, receipt and application of zakat according to one's religious tenets is illegal or violative of any provision of the Constitution of India.

4. It is clear that the suit raises questions regarding validity of the custom challenged by the plaintiffrs in respect of collection of amounts under various heads enumerated in para-3 of the plaint. The validity of such custom has been challenged on the ground that it violates the fundamental rights of the plaintiffs under Article 25 of the Constitution of India. It has been held by this Court in Behramshaw Hormanshah Bharda and others vs. Dastoorji Dr. Hormasdyr Kayozi Mirza and others reported in A.I.R. 1980, Gujarat, 74 that the question of validity of a custom on the ground whether it violates the fundamental rights guaranteed by Articles 25 and 26 of the Constitution was a matter involving a question as to the interpretation of the Constitution, because, examination of the validity of the custom would involve an examination of the scope and content and parameters of Articles 25 and 26 of the Constitution and therefore, a petition under Article 228 would be maintainable. It was held that without deciding the question of validity of custom which was put in issue in the suit, the case could not be disposed of and determination of such question was therefore, necessary for disposal of a case.

5. Having regard to the nature of questions involved in the said suit about validity of the custom of collecting amounts under various heads, by way of religious practice, these questions require to be examined in the light of constitutional provisions of Articles 25 and 26. The petitioners have therefore, made out a case for withdrawing the Civil Suit for its disposal by this Court or for determination of the questions involved as to the interpretation of the Constitution and returning the case for disposal in conformity with the decision of this Court that may be rendered.

6. We therefore, direct that Regular Civil Suit no.290 of 1982 be withdrawn from the Court of the Civil Judge (J.D.), Godhra under Article 228 of the Constitution of India for the determination of the above substantial questions of law as to the interpretation of the Constitution involved therein and its disposal. Rule is made absolute accordingly with no order as to costs.

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